

1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE WESTERN DISTRICT OF TEXAS**
 AUSTIN DIVISION

3 UNITED STATES OF AMERICA,) AU:10-CR-00297(1)-LY
)
4 Plaintiff,)
)
5 VS.) AUSTIN, TEXAS
)
6 DAVID ANDREW DIEHL,)
)
7 Defendant.) JUNE 15, 2011

8 *****
 TRANSCRIPT OF SENTENCING HEARING (RESET)

9 BEFORE THE HONORABLE LEE YEAKEL

10 *****

11 APPEARANCES:

12 FOR THE PLAINTIFF: MATTHEW B. DEVLIN
 ASSISTANT UNITED STATES ATTORNEY
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 AUSTIN, TEXAS 78701

14 FOR THE DEFENDANT: STEPHEN M. ORR
15 ORR & OLAVSON
 804 RIO GRANDE
16 AUSTIN, TEXAS 78701

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24 Proceedings recorded by computerized stenography, transcript
25 produced by computer.

09:28:52 1 (Open Court)

09:28:52 2 THE CLERK: The Court calls the following case for
09:28:55 3 sentencing: A:10-CR-297(1), *United States of America v.*
09:29:00 4 *David Andrew Diehl*.

09:29:01 5 MR. DEVLIN: Matthew Devlin for the United States.
09:29:04 6 Good morning, Your Honor.

09:29:05 7 MR. ORR: Steve Orr for Mr. Diehl, Your Honor.

09:29:07 8 THE COURT: All right. Very good.

09:29:08 9 First thing that the Court wants to take up,
09:29:16 10 Mr. Diehl, I received on Friday a letter from you indicating,
09:29:23 11 among other things, that you had fired your attorney. I have
09:29:30 12 reviewed that letter, and I have this morning provided copies
09:29:34 13 of it to both Mr. Orr and Mr. Devlin. And at this time, I'm
09:29:43 14 passing the original to Ms. Jones to file in the documents in
09:29:46 15 this case.

09:29:46 16 I will hear from you, Mr. Diehl, or from you,
09:29:52 17 Mr. Orr, or both of you initially with regard to that and what
09:30:02 18 the relationship between the two of you is at this point. And
09:30:12 19 when I say I will hear from you, that does not mean in any way
09:30:14 20 that you should construe anything I say as asking either one of
09:30:19 21 you to get into the things that would breach the
09:30:22 22 attorney-client privilege in this case. But I am concerned,
09:30:25 23 since we're here for sentencing in this case, that I have this
09:30:30 24 statement that Mr. Diehl may or may not be represented at this
09:30:36 25 time. Mr. Orr, do you want to commence?

09:30:40 1 MR. ORR: Yes, Your Honor. I certainly echo
09:30:43 2 Your Honor's concerns with any violation between
09:30:47 3 attorney-client privilege. Mr. Diehl has expressed to me that
09:30:51 4 he no longer wants me to be his lawyer. And I agree that that
09:30:55 5 would be -- certainly be all right with me, and I think it
09:30:59 6 would be in Mr. Diehl's best interest.

09:31:02 7 I've always told people that if they're not happy
09:31:05 8 with their lawyer, they should get another lawyer. Mr. Diehl
09:31:08 9 is involved in a serious case here, and I think he ought to
09:31:12 10 have a lawyer with whom he is happy.

09:31:14 11 The second part of all this is the government just --
09:31:16 12 I think I got it two days ago, their sentencing memorandum, and
09:31:20 13 I haven't had a chance to go over that with Mr. Diehl. I've
09:31:24 14 been preparing for the sentencing and didn't really have time
09:31:27 15 to go out to Bastrop and take it to him. I didn't get it in
09:31:31 16 time to mail it. I was out there last week talking to him
09:31:34 17 about the case.

09:31:35 18 But I think that -- I think I could say this: The
09:31:40 19 relationship between Mr. Diehl and myself I think is no longer
09:31:45 20 viable, and I think that he should be allowed to get another
09:31:50 21 attorney. And I'm urging, Your Honor, that if nothing else,
09:31:54 22 you grant us a continuance so that Mr. Diehl can have an
09:31:58 23 opportunity to seek another lawyer. And if he does not finally
09:32:02 24 get another lawyer, at least I can try to achieve some level of
09:32:11 25 rapport with Mr. Diehl that would allow me to continue, if he

09:32:15 1 can't get another lawyer, and have time to go over the
09:32:18 2 government's sentencing memorandum with him, the victim impact
09:32:22 3 statement that we received, I don't know, yesterday, was it or
09:32:26 4 day before? I'm not sure when.

09:32:28 5 PROBATION OFFICER: That's correct.

09:32:29 6 MR. ORR: It was yesterday?

09:32:30 7 PROBATION OFFICER: Day before yesterday.

09:32:32 8 MR. ORR: Day before. And I think that the victim
09:32:35 9 impact statement is fairly serious. There's some -- I need to
09:32:39 10 be prepared on that. I can't get prepared from Monday to today
09:32:42 11 on something like that. So I'm urging that, if nothing else,
09:32:46 12 you give us a continuance of 30 days so that we can try to work
09:32:50 13 this out.

09:32:53 14 THE COURT: Mr. Diehl, come forward, and you can pull
09:32:57 15 that microphone down so you can speak into it. You know the
09:33:06 16 letter to which we have been referring, the one you recently
09:33:09 17 sent to me that I received on Friday; is that correct?

09:33:12 18 THE DEFENDANT: Yes, Your Honor.

09:33:13 19 THE COURT: I'm not instructing you, as I said
09:33:15 20 earlier, to breach the attorney-client privilege in any way or
09:33:20 21 tell me anything you may have -- any discussions you may have
09:33:23 22 had with your lawyer. Within that you indicate you have fired
09:33:29 23 your attorney, Mr. Orr; is that correct?

09:33:31 24 THE DEFENDANT: Yes, sir.

09:33:32 25 THE COURT: Now, what steps have you taken to find a

09:33:37 1 new attorney?

09:33:38 2 THE DEFENDANT: Mr. Orr and I discussed replacing him
09:33:42 3 with his partner, Mr. Olavson. And I thought we had that
09:33:48 4 done. That way it would not disrupt this hearing. Mr. Orr
09:33:53 5 sent me a letter saying that that was going to be okay, that
09:33:56 6 there was going to be some financial differences which I was
09:34:00 7 willing to pay. And then last week I was informed that he
09:34:03 8 would not take this case for personal reasons; and, therefore,
09:34:08 9 I was put into this position of not having anybody.

09:34:15 10 THE COURT: All right. What steps, if I were to
09:34:20 11 grant you some time, would you take to try to attempt to find
09:34:26 12 an attorney? Are you aware of other attorneys -- other
09:34:29 13 criminal attorneys? Do you have anyone in mind in the way of a
09:34:33 14 criminal attorney? And you don't have to give me names. I am
09:34:36 15 just -- I'm curious generically as to what you have done or
09:34:42 16 will do in the future if I were to grant, at a minimum, the
09:34:46 17 additional time Mr. Orr has requested.

09:34:48 18 THE DEFENDANT: There are financial limitations I'm
09:34:51 19 up against, so that's a big factor. I don't know whether me
09:34:54 20 and Mr. Orr can work something out in terms of getting refunds
09:34:58 21 to help finance the new attorney. Otherwise, I might be in a
09:35:02 22 position of having to get a court-appointed one. I don't know
09:35:07 23 how much it would cost for somebody just to pick up
09:35:09 24 sentencing. I wouldn't assume it's that much, but I did talk
09:35:12 25 to one person. He's not in the state. He quoted in the

09:35:15 1 neighborhood of \$20,000.

09:35:21 2 THE COURT: All right. You may be seated. Do you
09:35:24 3 have anything else you'd like to add before I let you sit down.

09:35:28 4 THE DEFENDANT: Yeah. I was sentenced just briefly
09:35:32 5 in February. And I --

09:35:33 6 THE COURT: You weren't sentenced.

09:35:35 7 THE DEFENDANT: I'm sorry. My trial was -- I was
09:35:40 8 found guilty in February. And since then I've been very, very
09:35:43 9 dogged about getting the sentence memorandum and the PSI
09:35:47 10 objections completed and to give -- sign off on those two
09:35:51 11 documents. And there's a lot of cases that I went to the law
09:35:57 12 library and studied that I think are highly relevant to our
09:36:00 13 case, and, you know, they never got in to the PSI objections.
09:36:04 14 And I think the Court needs, you know, the time before the
09:36:07 15 sentencing to review those and to -- you know, it's way in our
09:36:12 16 favor to have that in addition to the sentencing memorandum.

09:36:16 17 And I did some research and talked over with some of
09:36:18 18 the lawyers and came up with a pretty specific defense in terms
09:36:22 19 of a variance. And, you know, that didn't get in there either,
09:36:25 20 and it's been all this time. You know, I kept thinking it
09:36:28 21 would, I kept thinking it would, and it just hadn't. And here
09:36:31 22 we are.

09:36:32 23 THE COURT: All right. Thank you. You may be
09:36:35 24 seated. Mr. Devlin, does the government have anything the
09:36:38 25 government would like to say at this juncture about what we're

09:36:41 1 talking about, the letter and relationship between Mr. Orr and
09:36:44 2 Mr. Diehl?

09:36:45 3 MR. DEVLIN: Well, Judge, I certainly have no inside
09:36:47 4 information, obviously, but I can tell you from my experience
09:36:50 5 with Mr. Diehl, which has been more extensive than my
09:36:54 6 experience with any other defendants, is that he's a
09:36:56 7 manipulative, narcissistic, defiant, hostile individual. And I
09:37:02 8 don't know if any attorney is going to satisfy Mr. Diehl.

09:37:05 9 Along the way I know that he has been -- he thinks he
09:37:09 10 knows more than his lawyer. I sat through a two-hour video
09:37:13 11 review with Mr. Diehl and Mr. Orr. And, you know, despite
09:37:19 12 Mr. Orr's extensive experience, his longtime involvement as a
09:37:24 13 criminal defense attorney, Mr. Diehl constantly came across as
09:37:28 14 being smarter -- being the smartest person in the room,
09:37:31 15 certainly smarter than Mr. Orr.

09:37:33 16 I have a feeling he's never listened to Mr. Orr, that
09:37:36 17 he feels that he's -- he needs to be walking out of this
09:37:42 18 courtroom today with no jail time. And short of that, it
09:37:45 19 doesn't matter who is going to be appointed to him. We're
09:37:48 20 going to come up against this again and again and again,
09:37:51 21 whether he hires a lawyer or whether he gets one appointed to
09:37:54 22 him.

09:37:54 23 I've known Mr. Orr for 15 years. I knew him when I
09:37:58 24 was over in the DA's office. I've known him here the whole
09:38:02 25 time. He's one of the best criminal defense lawyers out

09:38:05 1 there. I know the Court has known him even longer than that,
09:38:08 2 and I don't see how Mr. Diehl is going to hire himself a better
09:38:11 3 lawyer than Mr. Orr. I've seen Mr. Orr's work product in terms
09:38:16 4 of his objections, in terms of his motions at trial, in terms
09:38:20 5 of plea discussions, everything else, and there's not an
09:38:25 6 attorney out there who could have done a better job under the
09:38:28 7 circumstances than Mr. Orr.

09:38:29 8 This case is extraordinarily strong. Mr. Diehl --
09:38:32 9 from the letter that you handed me, Judge, today that Mr. Diehl
09:38:36 10 sent, he's obviously having a lot of regrets that he didn't
09:38:40 11 jump at the chance that he was offered a long time ago in the
09:38:43 12 case to take a plea deal. Now he's regretting that, and he's
09:38:46 13 turning around, as he's been doing with these offenses, and
09:38:49 14 he's blaming everybody but himself.

09:38:53 15 So I think this is just a delaying tactic. If you
09:38:56 16 give him 30 days to hire another lawyer, we're going to be
09:39:00 17 hearing the same thing again when we come back for a sentencing
09:39:02 18 hearing. He's not going to be happy with whoever that is.
09:39:05 19 He's not going to be satisfied that that attorney is doing
09:39:08 20 whatever it is that Mr. Diehl wants him to do to resolve or to
09:39:12 21 help him resolve this case. And, again, I just don't see
09:39:16 22 anyone better than Mr. Orr staying on this case. I'm sorry to
09:39:20 23 say that, because I'm sure Mr. Orr has had a very difficult
09:39:24 24 time with this defendant. But any lawyer would.

09:39:26 25 So with that and with the superficial observations

09:39:30 1 I've been able to make of their attorney-client relationship
09:39:34 2 and knowing what I know about Mr. Diehl, I just think we're
09:39:38 3 just putting off the inevitable here. I don't think he has any
09:39:42 4 claim whatsoever to ineffective assistance. Whatever
09:39:46 5 difficulties he's having with Mr. Orr are going to be the same
09:39:47 6 ones he's going to have with anybody else. So I'd ask the
09:39:50 7 Court to consider all of that.

09:39:52 8 THE COURT: Mr. Orr?

09:39:52 9 MR. ORR: Well, what Mr. Devlin says is speculation.
09:39:57 10 He doesn't know that Mr. Diehl won't find a lawyer that he
09:40:00 11 loves and trusts and believes will do him a good job. And
09:40:03 12 sometimes the second lawyer would achieve some level of trust
09:40:07 13 with the client that the first lawyer can't. I've taken over
09:40:10 14 lot of cases from other lawyers and done -- made the clients
09:40:14 15 happy.

09:40:15 16 Again, Mr. Diehl is charged with some very serious
09:40:21 17 stuff here. He's potentially going to get --

09:40:25 18 THE COURT: Actually, he's been convicted.

09:40:27 19 MR. ORR: Convicted. Excuse me. Well, I ...

09:40:29 20 THE COURT: We're beyond the charge.

09:40:31 21 MR. ORR: I try to -- well, I guess one of the jobs
09:40:33 22 of a defense lawyer sometimes is to just ignore reality.

09:40:37 23 So he's been convicted. He's now looking at being
09:40:41 24 sentenced and perhaps receiving large amounts of time. Even if
09:40:47 25 Your Honor is not inclined to let me withdraw, we should get

09:40:50 1 more time to prepare just because we got the sentencing memo
09:40:54 2 and the victim impact statement at a bare minimum due process.
09:40:58 3 And effective assistance of counsel with Mr. Diehl, he needs
09:41:00 4 more time to consult with whoever his lawyer may be.

09:41:03 5 I would appreciate you allowing me to withdraw. You
09:41:06 6 know, I've tried cases in this Court -- in the courtroom since
09:41:10 7 the early '70s, Your Honor. I very, very rarely have ever
09:41:16 8 asked to withdraw in a case. I did a jury trial in here one
09:41:19 9 time representing a lawyer who wrote me a hot check for the fee
09:41:22 10 and was still compelled to try the case and I did it.

09:41:26 11 I just think that Mr. Diehl, he needs -- he needs
09:41:30 12 another lawyer. I think it's gone to the point where my
09:41:33 13 personal opinion and my representation to the Court is that he
09:41:37 14 ought to get another lawyer. It may be that Mr. Olavson could
09:41:41 15 come in. I don't think so. I think he just -- he couldn't do
09:41:45 16 it. Just didn't want to do it. There was some discussion
09:41:47 17 about all of that.

09:41:49 18 But I think that just fundamental fairness and right
09:41:52 19 to effective assistance of counsel would -- I think would --
09:41:56 20 should allow Mr. Diehl to have the opportunity to get another
09:41:58 21 lawyer and I think I ought to be allowed to withdraw today,
09:42:02 22 frankly. And I would assist any new counsel. I would spend
09:42:08 23 whatever amount of time I need to bring them up to the speed
09:42:12 24 and get this case over with.

09:42:14 25 We've done an immense amount of research, and I just

09:42:20 1 think that the case could use a little more time to be prepared
09:42:24 2 for sentencing for various reasons outside the control of
09:42:28 3 Mr. Diehl or myself.

09:42:30 4 THE COURT: Thank you.

09:42:45 5 Well, I'll make a couple of observations. One with
09:42:49 6 regard to the time factor, the government's sentencing
09:42:53 7 memorandum was filed June the 13th, which was Monday. And you
09:42:58 8 have indicated you need -- or some lawyer would need additional
09:43:02 9 time to respond to that sentencing memorandum.

09:43:05 10 And I will note in that sentencing memorandum the
09:43:08 11 government urges the Court to go above the projected guideline
09:43:15 12 range of 405 months. So I do think it would be -- it would be
09:43:21 13 of use and benefit to the Court to have a response to that.
09:43:26 14 Further, I think the indication was that on -- what's today?
09:43:33 15 Wednesday? -- Monday you received the victim's impact letter
09:43:35 16 also; is that correct?

09:43:36 17 MR. ORR: I thought it was maybe yesterday.

09:43:38 18 PROBATION OFFICER: Your Honor, I received in my
09:43:40 19 office on Monday and made it available to Mr. Orr that day.
09:43:44 20 But I think you had a courier pick it up Tuesday morning.

09:43:47 21 MR. ORR: Yeah. I may not have. Well --

09:43:49 22 THE COURT: It doesn't matter whether it was Monday
09:43:51 23 or Tuesday. It was this week, and we're here on Wednesday.

09:43:54 24 MR. ORR: Right.

09:43:54 25 THE COURT: And you have indicated that you need time

09:43:57 1 to respond to that. I note from my review of all of the
09:44:02 2 information that I have previously received with regard to this
09:44:07 3 sentencing: That on February the 8th we conducted a bench
09:44:19 4 trial in this case, and I believe it was on the 9th that I
09:44:23 5 found this defendant guilty of ten counts as charged. And I
09:44:29 6 believe it was the second superseding indictment. Under the
09:44:33 7 statute under which this defendant has been convicted, he
09:44:38 8 potentially faces 20 years confinement per count, or a
09:44:44 9 potential total of 200 years confinement.

09:44:49 10 The Probation Department, as you are aware from their
09:44:56 11 presentence investigation report applying the 2000 guidelines,
09:45:00 12 has indicated the correct guideline provision, if this Court
09:45:05 13 were to consider a guideline sentence, was 324 to 405 months.

09:45:11 14 Looking at the substantial potential penalties
09:45:17 15 against Mr. Diehl, because the statute also has a mandatory
09:45:25 16 ten-year minimum in it, I want to make sure that all issues and
09:45:33 17 aspects of this case, both from the prosecution's point of view
09:45:38 18 and the defendant's point of view, that could in any way impact
09:45:43 19 on my decision as to the appropriate sentence in this case be
09:45:49 20 presented to me.

09:45:53 21 That being said, that information can be presented to
09:45:58 22 me either by existing counsel or by new counsel. Mr. Diehl has
09:46:06 23 indicated that he would like new counsel. Mr. Orr has
09:46:09 24 indicated that he believes that would be a good idea due to
09:46:13 25 their relationship.

09:46:17 1 Mr. Diehl, I want to tell you that your
09:46:21 2 constitutional guaranty is to effective assistance of counsel,
09:46:26 3 not necessarily counsel of your choice. I do pay careful
09:46:30 4 attention to what has been expressed by the government, that
09:46:34 5 the government has a concern that if I grant additional time or
09:46:39 6 I allow you to get another attorney, that there will never be
09:46:43 7 an attorney that is satisfactory to you and we will start down
09:46:46 8 a path of continuing delays.

09:46:49 9 I can assure that will not happen. We're not going
09:46:52 10 to go through attorney after attorney after attorney. I will
09:46:57 11 state that I believe that you have been extremely
09:47:00 12 well-represented in this case to date. I have read everything
09:47:05 13 I have been provided on your behalf to date, and I have heard
09:47:09 14 Mr. Orr indicate that he would provide other materials if given
09:47:13 15 additional time to respond.

09:47:16 16 Mr. Orr, I'm not inclined to let you withdraw as
09:47:20 17 counsel today. One, I do not want there to be a question about
09:47:29 18 a gap in representation of Mr. Diehl. And, secondly, I want
09:47:34 19 this case to continue forward with the -- whatever responses
09:47:42 20 you feel are appropriate to protect Mr. Diehl.

09:47:47 21 What I will do is reset this sentencing hearing I
09:47:53 22 will continue it based on the letter I received from Mr. Diehl
09:47:57 23 for a reasonable period of time. During that period of time,
09:48:02 24 Mr. Orr, you know, I want to see responses as you have
09:48:08 25 indicated you will file either by you or someone else. And

09:48:12 1 Mr. Diehl, you are to continue to attempt to find counsel.

09:48:17 2 If you cannot do so, then I'm going to have to take
09:48:26 3 up the question with regard, then, to whether the Court should
09:48:32 4 appoint counsel for you. And that will be dependent upon
09:48:36 5 another hearing that most likely will be conducted in the
09:48:39 6 presence of a magistrate as to whether or not you qualify for
09:48:44 7 court-appointed counsel. It's not an immediate step if you
09:48:48 8 can't get a new counsel of your choosing to whether you qualify
09:48:51 9 for court-appointed counsel. I want you to understand that.
09:48:58 10 And Mr. Orr, that could lead to the fact that you stay in the
09:49:02 11 case.

09:49:05 12 So what I'm going to do is reset this case for
09:49:16 13 approximately 30 days -- reset this sentencing. And you,
09:49:27 14 Mr. Diehl, are to work diligently to obtain new counsel and you
09:49:32 15 are to make Mr. Orr aware of what you are doing, because if you
09:49:38 16 have obtained new counsel, then I will address that in the
09:49:45 17 context of the motion to withdraw and substitute counsel by
09:49:50 18 Mr. Orr. So I don't want you to correspond directly with the
09:49:54 19 Court. I want you to go through your existing lawyer so he
09:49:58 20 knows what is going on. And I am going to reset this case for
09:50:08 21 sentencing on July the 20th at 2 p.m. in the afternoon.

09:50:19 22 Now, I would expect to hear something from the
09:50:26 23 defense within about two weeks.

09:50:30 24 MR. ORR: Yes, sir.

09:50:32 25 THE COURT: And, Mr. Orr, since I am not allowing you

09:50:36 1 to withdraw at this point, you need to be aware of, as I said,
09:50:41 2 the materials that you need to respond to.

09:50:43 3 MR. ORR: Yes, sir.

09:50:44 4 THE COURT: Mr. Devlin?

09:50:45 5 MR. DEVLIN: Judge, may I speak for just a moment?

09:50:47 6 THE COURT: You may.

09:50:47 7 MR. DEVLIN: I did not address the continuance here
09:50:49 8 because I thought we were dealing with representation. But I
09:50:52 9 wanted to note to the Court that we have a number of folks who
09:50:55 10 are here today who went out of their way to be here for this
09:50:59 11 hearing. And I would respectfully ask the Court, if I might
09:51:04 12 have an opportunity in the next day or two, to find out if
09:51:08 13 they're going to be able to make it back for that sentencing
09:51:11 14 hearing. Because I know at least right now, one of my agents
09:51:14 15 who I anticipated to present some information is apparently not
09:51:17 16 going to be available on that date. And I hope the Court would
09:51:19 17 be receptive to reset that, if necessary.

09:51:21 18 THE COURT: No. I will very much so be receptive to
09:51:23 19 that, because I want this -- this is an important matter. It's
09:51:27 20 not only important to the defendant. It's important to the
09:51:29 21 people who are involved in this case. I recognize that.

09:51:36 22 MR. DEVLIN: Thank you, Your Honor.

09:51:37 23 THE COURT: Well, I will tell you this at this
09:51:39 24 point: I am more than willing to hold that date at this time
09:51:46 25 and just grant a continuance and have you speak with your

09:51:49 1 agents and the other people to find a time when everyone can be
09:51:55 2 here. And then talk to Mr. Orr about that. And if you want to
09:51:59 3 get back with me, you ought to be able to do that here this
09:52:03 4 morning.

09:52:03 5 MR. DEVLIN: Yes, sir.

09:52:03 6 THE COURT: Get back with me today on what a date
09:52:09 7 was. I will withhold the order resetting it until I know a
09:52:12 8 date when everybody can be present.

09:52:15 9 MR. DEVLIN: Thank you, Your Honor.

09:52:16 10 THE COURT: Now, I will tell you you need to give me
09:52:18 11 a range on that, because this is not my only case, although
09:52:26 12 this is an important case. And I would suggest to you -- I
09:52:30 13 picked the week of -- I picked the day of the 20th just because
09:52:35 14 there's a convenient gap in my schedule which was about 30 days
09:52:38 15 away.

09:52:39 16 I will tell you, if it suits everybody's schedule,
09:52:45 17 the 9th and 10th of August are not bad days to do this. I have
09:52:51 18 criminal trials set the week August the 1st, which is a
09:52:56 19 problem. I have a civil case that will be tried the week of
09:53:01 20 August the 15th. Other potential days could fall within the
09:53:08 21 week of August the 22nd. So discuss those days, because it is
09:53:15 22 not as simple as coming up with one day because of the rest of
09:53:20 23 the Court's docket. Although, you know, cases sometimes settle
09:53:27 24 on the civil side and sometimes they don't go to trial on the
09:53:31 25 criminal side, but we can't rely on that. And I would not want

09:53:35 1 to set -- reset this at a time when I know I have another case
09:53:39 2 set and then just have to push it down the line again.

09:53:43 3 MR. DEVLIN: Yes, sir. We appreciate your
09:53:44 4 considering that. Thank you.

09:53:46 5 THE COURT: Try to find a range within that period of
09:53:48 6 time. And I will withhold an order at this point, but I would
09:53:53 7 like to hear back sometime today on what that scheduling is.

09:53:58 8 MR. DEVLIN: Should we communicate with Ms. Jones
09:54:00 9 about that, Judge, or submit something formal?

09:54:02 10 THE COURT: You can let Ms. Jones know, and she will
09:54:05 11 get with me. It doesn't have to be formal. My decision is to
09:54:09 12 continue the sentencing for two reasons: Number one, if
09:54:13 13 Mr. Orr remains in the case, he has requested additional time
09:54:16 14 to respond to what came in this week. And I presume, and I
09:54:20 15 want everybody to know, I'm not trying to bar anybody from
09:54:23 16 submitting materials they want to. But every time things come
09:54:27 17 in from whatever side close in time to a sentencing, I'm going
09:54:31 18 to allow the other side an opportunity to respond to that. If
09:54:34 19 Mr. Orr had filed things and Mr. Diehl had filed things this
09:54:38 20 week that you felt like you needed to respond to, I would grant
09:54:41 21 you the same thing I've granted him.

09:54:44 22 So the one reason I have granted the continuance is
09:54:47 23 to allow a fully developed record for purposes of the
09:54:50 24 sentencing hearing. And the other reason is to see if
09:54:53 25 Mr. Diehl can work out his attorney problems. So it wasn't on

09:54:58 1 any one basis that I postponed the case.

09:55:02 2 If you need -- if the two of you -- Mr. Devlin, after
09:55:05 3 you have found out from everyone what their availability is, if
09:55:12 4 we need to get us together by conference telephone call or in
09:55:16 5 my chambers today and just look at calendars and see what can
09:55:19 6 be worked out, I'll be more than happy to see y'all today. I
09:55:23 7 do want to render an order today on this and get this
09:55:27 8 rescheduled. So Mr. Devlin, anything further?

09:55:30 9 MR. DEVLIN: No, Your Honor.

09:55:32 10 THE COURT: Mr. Orr, anything further?

09:55:34 11 MR. ORR: No, Your Honor.

09:55:34 12 THE COURT: Mr. Diehl, anything further?

09:55:37 13 THE DEFENDANT: No, sir. No, Your Honor.

09:55:39 14 THE COURT: All right. Then at this time, the Court
09:55:42 15 is in recess.

09:55:44 16 (End of transcript)

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1 **UNITED STATES DISTRICT COURT)**

2 **WESTERN DISTRICT OF TEXAS)**

3 I, Arlinda Rodriguez, Official Court Reporter, United
4 States District Court, Western District of Texas, do certify
5 that the foregoing is a correct transcript from the record of
6 proceedings in the above-entitled matter.

7 I certify that the transcript fees and format comply with
8 those prescribed by the Court and Judicial Conference of the
9 United States

10 WITNESS MY OFFICIAL HAND this the 28th day of
11 February 2012.

12

13 /S/ Arlinda Rodriguez
14 Arlinda Rodriguez, Texas CSR 7753
15 Expiration Date: 12/31/2012
16 Official Court Reporter
17 United States District Court
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